1	STEVEN F. GRUEL (SBN 213148)	
2	315 Montgomery Street, 9 <sup>th</sup> Floor San Francisco, California 94104	
3	Telephone Number (415) 989-1253 Fax Number (415) 449-3622	
4	attystevengruel@sbcglobal.net  www.gruellaw.com  Attorney for Robert Rasheed	
5		
7	UNITED STATES DISTRICT COURT  NORTHERN DISTRICT OF CALIFORNIA  OAKLAND DIVISION	
8		
9		
10		
11	UNITED STATES OF AMERICA,	No. CR-14-0582-PJH
12	Plaintiff,	) JOINT DEFENSE OPPOSITION TO ) GOVERNMENT MODIFICATION OF
13	Vs.	9 <sup>th</sup> CIRCUIT MODEL JURY INSTRUCTION 8.20 (2010) FOR ELEMENTS OF
14	ALVIN FLORIDA, et al.,	) CONSPIRACY
15	Defendants.	Honorable Phyllis J. Hamilton
16	Detendants.	)
17		)
18		
19		
20		
21		)
22	The defendants, by and through their counsel, jointly submit this JOINT DEFENSE	
23	OPPOSITION TO GOVERNMENT MODIFICATION OF 9 <sup>th</sup> CIRCUIT MODEL JURY	
24	INSTRUCTION 8.20 (2010) FOR ELEMENTS OF CONSPIRACY.	
25	JOINT OPPOSITION	
26		

## Case 4:14-cr-00582-PJH Document 310 Filed 11/09/16 Page 2 of 3

Yesterday the government belatedly suggested that the 9<sup>th</sup> Circuit Model Jury Instruction 8.20 (2010) defining the Elements of Conspiracy be changed to include the word "subagreements." The single argument made by the government for its suggestion was *United States v. Tille*, 729 F.2d 615, (9<sup>th</sup> Cir. 1984). A review of the case shows that it offers no authority or support to alter the 9<sup>th</sup> Circuit's Model Instruction defining the elements of conspiracy as suggested by the government.

First, *Tille* was a RICO prosecution. It has absolutely nothing to do with either the Sherman Act or a discussion of the elements of conspiracy. Second, the Court's reference in the case pertaining to "subagreements" was in the context of the admission of co-conspirator statements and whether certain testimony was inadmissible hearsay, irrelevant and prejudicial. *Tille*, at 621. There is absolutely nothing in *Tille* which supports, much less mentions, that the 9<sup>th</sup> Circuit Model Instruction for the elements of conspiracy should be changed for this case.

In short, the question of whether there was a "single overall agreement" to violate the Sherman Act, as charged, or multiple conspiracies, is a question for the jury to decide based on the evidence. The jury question of whether there was a single conspiracy as opposed to multiple conspiracies is not novel. Both theories of the case are fairly discussed and represented with the 9<sup>th</sup> Circuit Model instructions ordered yesterday by the Court. The government offers no legal authority whatsoever supporting that the time tested model instruction for the elements of conspiracy should now be changed for this case.

20

25

26

Dated: November 9, 2016 21

Respectfully Submitted,

/s/

SHAFFY MOEEL Attorney for Defendant ALVIN FLORIDA. JR.

STEVEN GRUEL Attorney for Defendant ROBERT ALHASHASH RASHEED

## Case 4:14-cr-00582-PJH Document 310 Filed 11/09/16 Page 3 of 3

\_/s/\_\_ JOHN FORSYTH Attorney for Defendant JOHN LEE BERRY, III \_/s/\_\_\_ EDWIN PRATHER Attorney for Defendant REFUGIO DIAZ